

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

**ROYAL WHITAKER III and  
SUSAN WHITAKER,**

**Plaintiffs,**

**vs.**

**TRANS UNION CORPORATION,  
EXPERIAN INFORMATION  
SOLUTIONS, INC., and  
CSC CREDIT SERVICES, INC.,**

**Defendants.**

**CIVIL ACTION**

**No. 03-2551-CM**

**ORDER**

On February 4, 2005, the Honorable G. Thomas VanBebber entered judgment for defendants and against plaintiffs in this case (Doc. 214). Although the court originally disallowed costs, defendant Trans Union Corporation asked the court to reconsider its decision, and the court ruled that defendant Trans Union was entitled to its costs in an Order dated October 14, 2005. The Clerk of the Court taxed costs in the amount of \$3,435.32 on February 24, 2006, and plaintiffs filed an Objection to Bill of Costs (Doc. 247) on February 28, 2006. The court construes plaintiffs' objection as a timely motion to retax costs. *See* Fed. R. Civ. P. 54(d)(1) ("On motion served within 5 days thereafter, the action of the clerk may be reviewed by the court."); D. Kan. R. 54.1(a).

Plaintiffs contend that defendant claimed excessive and unnecessary costs, including costs for unnecessary documentation, depositions, and subpoenas for creditors who were not included in plaintiffs' complaint. Plaintiffs claim that video depositions were unnecessary, and they offer to return the videos and five boxes of copied documents. According to plaintiffs, a more reasonable

amount of costs is \$500-\$600, although plaintiffs once suggested that the court reduce the bill of costs to \$688.

In reviewing the clerk's taxation of costs, the court makes a *de novo* determination. *See Green Constr. Co. v. Kan. Power & Light Co.*, 153 F.R.D. 670, 674 (D. Kan. 1994). Taxation of costs is within the court's discretion, limited by the parameters of 28 U.S.C. § 1920, which specifies categories of costs that may be awarded. *Id.* at 675. A presumption that costs will be awarded arises, however, where requested costs are statutorily-authorized. *Id.* (citing *U.S. Indus., Inc. v. Touche Ross & Co.*, 854 F.2d 1223, 1245 (10<sup>th</sup> Cir. 1988)). The prevailing party bears the burden of showing that particular costs are authorized by statute. *Id.* But once the prevailing party has demonstrated that particular costs are statutorily-authorized, the non-prevailing party bears the burden of showing that costs are otherwise improper. *Cantrell v. IBEL Local 2021*, 69 F.3d 456, 459 (10<sup>th</sup> Cir. 1995) (citations omitted). The court will look at each disputed category of costs individually.

## **I. Issuance of Subpoenas**

28 U.S.C. § 1920(1) provides for taxation of "[f]ees of the clerk and marshal." Many courts have interpreted this to allow taxation of the costs of serving summons and subpoenas, even if the U.S. Marshal does not serve the summons or subpoenas. *See, e.g., United States Equal Employment Opportunity Comm'n v. W&O, Inc.*, 213 F.3d 600, 623-24 (11<sup>th</sup> Cir. 2000). But here, defendant did not incur process server fees. Rather, defendant asks the court to allow it to recoup its postage expenses for mailing subpoenas and other documents associated with subpoenas. Most of defendant's submissions are for the costs of sending documents by certified mail. Others are for Federal Express charges. Neither type of expense is recoverable. *See Ortega v. IBP, Inc.*, 883 F.

Supp. 558, 562 (D. Kan. 1995) (postage expenses); *Burton v. R.J. Reynolds Tobacco Co.*, 395 F. Supp. 2d 1065, 1087 (D. Kan. 2005) (Federal Express charges). The court will not tax defendant's costs associated with issuance of subpoenas. The court will, however, allow defendant its \$100 fee to appear *pro hac vice*.

## II. Depositions

Section 1920(2) provides that the court may tax "[f]ees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case." The Tenth Circuit has held that this portion of the statute implicitly permits the court to tax the costs of video depositions. *Tilton v. Cap. Cities/ABC, Inc.*, 115 F.3d 1471, 1477 (10<sup>th</sup> Cir. 1997). *Tilton* further held that a party may recover both the costs of the transcript and the videotape deposition. *Id.* at 1478.

Defendant has shown the court that the depositions taken were not merely for discovery purposes and that videotaping the depositions of plaintiffs was reasonably necessary. Defendant saw indications in discovery that plaintiffs might testify inconsistently in deposition and at trial, and thought it necessary to preserve plaintiffs' appearance in deposition for the jury to review. For these reasons, defendant is entitled to the properly-supported costs of depositions and transcripts.

But the court will not tax postage expenses. *See Ortega*, 883 F. Supp. at 562. Nor will the court tax delivery charges. *See Burton*, 395 F. Supp. 2d at 1087. The court further finds that charges for ASCII Disks, "DV Masters," "Encoding DV to MPEG onto Medium (CD)," condensed transcripts, and additional copies of transcripts are expenses that defendant incurred solely for its convenience, and are not appropriately taxed against plaintiffs. *See Stadtherr v. Elite Logistics, Inc.*, No. 00-2471-JAR, 2003 WL 21488269, at \*4 (D. Kan. June 24, 2004) (citing *Battenfeld of Am. Holding Co. v. Baird, Kurtz & Dobson*, 196 F.R.D. 613, 615 n.1 (D. Kan. 2000)). The bill for the

deposition of Christopher G. Mokris shows that many of these expenses are included in the total, but the bill is not itemized. Defendant bears the burden of showing that expenses are authorized by statute, and the court finds that defendant has not met that burden with respect to Mr. Mokris's deposition. The court will therefore disallow the entire bill of \$298.59. Moreover, the bill for the transcript of Alfonza Smith indicates that the transcript was shipped by Federal Express and that the transcript was expedited. The court cannot tell what portion of the \$388.25 bill is attributable to these expenses, which are for the convenience of defendant. Because defendant has not met its burden with respect to the deposition of Mr. Smith, the court will also disallow costs in the amount of \$388.25. This leaves the following deposition expenses as taxable against plaintiffs:

Susan Whitaker transcript, attendance, signature, exhibits	\$517.00
Susan Whitaker videotaping	\$380.00
Royal Whitaker transcript, attendance, signature, exhibits	\$339.40
Royal Whitaker videotaping	\$230.00
Michael Jackson transcript	\$54.60
Gregory Dunbar telephone transcript, attendance, exhibits	\$62.20
Alfonza Smith telephone service charges	\$48.88
<b>TOTAL ALLOWED DEPOSITION EXPENSES</b>	<b>\$1,632.08</b>

### III. Printing

Section 1920(3) allows the court to tax “[f]ees and disbursements for printing and witnesses.” The clerk taxed plaintiffs \$226.08, or 1,884 pages at \$0.12 a page, for printing. Defendant explained that because plaintiffs proceeded *pro se*, defendant had to provide a copy of each filed document, totaling 1,884 pages, to plaintiffs. The court finds that the full amount was a necessary expense incurred by defendant and should be taxed to plaintiffs.

#### IV. Copies

Section 1920(4) provides for taxation of “[f]ees for exemplification and copies of papers necessarily obtained for use in the case.” The clerk taxed plaintiffs \$756.84 for copies, including \$27.84 for copies that defendant made of documents to respond to plaintiffs’ discovery requests and \$519.56 for “copying and bates labeling of documents produced with [defendant’s] disclosures.” “As a general rule, prevailing parties are not entitled to recover costs incurred in responding to discovery; because the producing party possesses the original documents, such papers are not ‘obtained’ for purposes of sec. 1920(4).” *Pehr v. Rubbermaid, Inc.*, 196 F.R.D. 404, 407 (D. Kan. 2000) (citation omitted); *see also Burton*, 395 F. Supp. 2d at 1085 (citation omitted). Defendant’s own description of the documents copied and labeled suggests to the court that the documents were in the possession of defendant and not “obtained.” The court will therefore disallow \$547.40 of defendant’s costs for copies. The remainder of the copies, however, the court finds constitute costs necessarily incurred by defendant, based on the statements in defense counsel’s affidavit. The court will tax \$209.44 for copies of papers necessarily obtained for use in the case.

#### V. Conclusion

In summary, the court allows the following costs:

Clerk Fees	\$100
Depositions	\$1,632.08
Printing	\$226.08
Copies	<u>\$209.44</u>
Total	\$2,167.60

**IT IS THEREFORE ORDERED** that plaintiffs’ Objection to Bill of Costs (Doc. 247), which the court construes as a motion to retax costs, is sustained in part. The court taxes costs in the amount of \$2,167.60.

Dated this 7th day of August 2006, at Kansas City, Kansas.

s/ Carlos Murguia  
**CARLOS MURGUIA**  
**United States District Judge**